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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHOONYOUN LEE,

No. C 09-05614 RS

Plaintiff,

**ORDER REFERRING LITIGANT TO
FEDERAL PRO BONO PROJECT**

v.

AT&T CORP., et al.

Defendants.

_____ /

I. INTRODUCTION

Choonyoun Lee asks the Court to refer her to the Federal Pro Bono Project for appointment of a volunteer attorney to assist in a civil action against AT&T Corporation (“AT&T”) and Communication Workers of America (the “Union”). Additionally, Lee asks the Court to stay the proceedings pending the appointment of counsel. The Union opposes only her request to stay the proceedings. Because Lee has demonstrated that her claim is one that would benefit from referral to the Federal Pro Bono Project, her motion for referral is granted. All proceedings are stayed for four weeks from the date a volunteer attorney is appointed by this Court to represent Lee. Moreover, the matter is appropriate for resolution without oral argument pursuant to Civil Local Rule 7-1(b) and the motion hearing set for **June 17, 2010** is **vacated**.

1 II. FACTS

2 In 2004, plaintiff was laid off by her employer, AT&T, from her position as a technician. In
3 or about September of 2007, Lee lived in California and applied for a job through the AT&T Rehire
4 System. On September 21, 2007, AT&T offered her a position in Connecticut. Lee accepted the
5 offer. The position was to begin in October of 2007. Lee was told she had one month to move from
6 California to Connecticut. She explains she sold her car, rented her home, and moved east in
7 anticipation of the new job.

8 On or about October 23, 2007, AT&T informed Lee that she could not begin work because
9 her application was missing a single requirement, something termed "Customer Service Skills."
10 Plaintiff insists the requirement was not listed among the job requisites when she applied for and
11 accepted the position. Subsequently, Lee contends AT&T erroneously classified her as terminated
12 "for cause." As a result, Lee lost compensation and benefits. She also points out that she expended
13 sums of money in her relocation from California to take the position. She avers that the sudden job
14 loss in conjunction with the move and the money spent caused her emotional distress.

15 After unsuccessfully attempting to resolve her dispute with AT&T, Lee filed a Complaint in
16 the instant case in Alameda County Superior Court. She alleged her employer breached its
17 collective bargaining agreement with the Union with respect to her transfer to a Connecticut facility.
18 She also alleges that the Union initially filed a grievance, although it is unclear with whom, and then
19 improperly determined not to proceed.

20 Defendants removed her Complaint to federal court on November 30, 2009. In February of
21 2010, the parties stipulated to postpone a Case Management Conference so that Lee might first
22 secure counsel. On April 22, 2010, Lee filed a Motion to Appoint Counsel. The request was
23 denied, although the Order suggested Lee contact this Court's pro se litigant help desk. On May 3,
24 2010, plaintiff filed this motion requesting referral to the Federal Pro Bono Project. While not
25 spelled out in her Complaint, Lee alleges in her motion that AT&T's failure to hire her resulted
26 from unlawful discrimination on the basis of age and race.

27 III. LEGAL STANDARD

1 As a general rule, there is no right to appointed counsel in a civil case. *See Lassiter v. Dep't*
 2 *of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18, 25 (1981). The Ninth Circuit has also
 3 specifically reiterated that a plaintiff lacks a constitutional right to appointment of counsel to
 4 advance employment discrimination claims. *Ivey v. Board of Regents*, 673 F.2d 266, 269 (9th Cir.
 5 1982). The 1964 Civil Rights Act does, however, contemplate appointment of counsel in
 6 employment discrimination cases “in such circumstances as the court may deem just.” *Bradshaw v.*
 7 *Zoological Soc. of San Diego*, 622 F.2d 1301, 1318 (9th Cir. 1981). *See also* 42 U.S.C. § 2000e-
 8 5(f)(1). Where a party meets certain criteria, courts in this district have held that he or she may be
 9 referred to the Federal Pro Bono Project. That office then endeavors to locate a volunteer attorney
 10 to represent the party. The operative test for referral adopts that set forth by the Ninth Circuit in
 11 *Bradshaw* for appointment of counsel: 1) the plaintiff’s financial resources; 2) the efforts made by
 12 the plaintiff to secure counsel; and 3) the relative merit of the plaintiff’s claims. *Bradshaw*, 622
 13 F.2d at 1318.¹

14 IV. DISCUSSION

15 A. Plaintiff’s Financial Resources

16 In a declaration supporting her motion, Lee claims she does not have the financial resources
 17 to retain counsel. In support, she attaches a document entitled “Financial Information About
 18 Choonyoun Lee.” (Ex. A.) There, Lee supplies the financial information courts request in support
 19 of an application to proceed *in forma pauperis*. In an *in forma pauperis* application, a plaintiff
 20 requests leave to proceed without paying the normal filing and administrative costs of a lawsuit.
 21 While Lee does not seek *in forma pauperis* status at this stage of the litigation, the information
 22 about her financial assets contained in that questionnaire is useful in determining whether she
 23 qualifies for representation under the Federal Pro Bono Project.

24
 25
 26 ¹ For cases applying the test see *Loyola v. Potter*, No. 09-0575, 2009 U.S. Dist. LEXIS 36179, at *4
 27 (N.D. Cal. Apr. 16, 2009); *Glass v. Potter*, No. 09-1554, 2009 U.S. Dist. LEXIS 50990, at *2 (N.D.
 28 Cal. June 1, 2009); *Pascual v. Astrue*, No. 08-02906, 2009 U.S. Dist. LEXIS 14763, at *2 (N.D.
 Cal. Feb. 6, 2009); *Guidelines of the Federal Pro Bono Project of the United States District Court,*
Northern District of California, revised June 25, 2008.

1 Plaintiff is not presently employed and does not receive any income from rent, stocks,
2 pensions, or government programs. (Ex. A at 1-2.) Lee is not married, and has one dependent child
3 who is a full time student at the University of California, San Diego. (Ex. A at 2-3.) She has \$9,000
4 in a bank account. (Ex. A at 3.)

5 While Lee did not answer all questions in Exhibit A regarding her financial status, that
6 application, as noted above, relates to a request to proceed *in forma pauperis*, rather than for referral
7 for the purpose of appointment of counsel. Although more information about Lee's financial assets
8 might have been useful, these omissions do not preclude consideration of the information provided
9 for that purpose.

10 Based on the information provided, Lee has shown that she does not have the financial
11 resources to hire a lawyer at this juncture. Accordingly, she satisfies the first step of the *Bradshaw*
12 analysis. The fact that she lacks any monthly income is particularly important, and in a practical
13 sense, outweighs the fact that she apparently has some other, largely illiquid, assets.

14 B. Plaintiff's Efforts to Secure Counsel

15 Plaintiff attached a list of attorneys she contacted in support of her claim that she has
16 attempted to find counsel. Lee claims to have contacted over forty-four attorneys and/or law firms.
17 (Ex. B.) She avers she contacted a variety of employers, including the Local Bar Association, large
18 law firms, and solo practitioners. (Ex. B.) Plaintiff provided phone numbers or email addresses of
19 the attorneys she contacted.

20 The relevant case law does not establish just how many attorneys an individual must contact
21 in order to satisfy *Bradshaw's* second factor. *See Pinckney v. Yuba Cmty. College*, No. 08-3068,
22 2008 U.S. Dist. LEXIS 102859, at *4 (N.D. Cal. Dec. 9, 2009) (denying a plaintiff's request for
23 appointment of counsel where he did not provide specific information detailing his efforts to find
24 representation); *Loyola v. Potter*, No. 09-0575, 2009 U.S. Dist. LEXIS 36179, at *4, (determining
25 that a party failed to meet this requirement where he did not identify a single name of an attorney
26 contacted). Here, the record reflects that Lee has contacted a sufficient number of attorneys and
27 provided ample documentation of her attempts to retain counsel. (Ex. B.)

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1 C. The Merit of Plaintiff’s Case

2 Plaintiff attached a summary of the case to demonstrate that her claims against AT&T and
3 the Union are meritorious. In that case summary, but not in her Complaint, Lee alleges AT&T
4 engaged in age and race discrimination and lacked any legitimate basis for firing her. (Ex. C.) Her
5 Complaint also supplies facts and allegations to support various breach of contract theories.

6 When examined together, Lee’s Complaint and the case summary suggest at least a plausible
7 claim of age and/or race discrimination against AT&T. Of course, it is not completely clear if Lee
8 has exhausted her administrative remedies as required by the ADA and Title VII before continuing
9 with an age or race discrimination cause of action. See *Freeman v. Oakland Unified School District*,
10 291 F.3d 632, 636 (9th Cir. 2002), and 42 U.S. C. § 6104(e)(2) (2010). Regardless, however, the
11 information Lee provided also suggests facts that may lend support to other viable claims.
12 Accordingly, Lee’s claim has sufficient merit to warrant referral to the Federal Pro Bono Project.

13 V. CONCLUSION

14 Plaintiff has demonstrated that she lacks the financial resources to retain counsel, has made
15 sufficient but unsuccessful efforts to do so, and advances adequate claims at this stage to warrant
16 referral to the Federal Pro Bono Project. IT IS HEREBY ORDERED that Choonyoun Lee shall be
17 referred to the Federal Pro Bono Project in the manner set forth below:

- 18 1. The clerk shall forward to the Volunteer Legal Services Program of the Bar
19 Association of San Francisco (“BASTF”)/Santa Clara County Bar Association
20 (“SCCBA”) one (1) copy of the court file with a notice of referral of the case
21 pursuant to the guidelines of the Federal Pro Bono Project for referral to a volunteer
22 attorney.
- 23 2. Upon being notified by the BASF/SCCBA that an attorney has been located to
24 represent the plaintiff, that attorney shall be appointed as counsel for Choonyoun Lee
25 for the duration of this matter.
- 26 3. All proceedings in this action are hereby stayed until four weeks from the date an
27 attorney is appointed to represent Choonyoun Lee in this action. See *Guidelines of*
28

1 *the Federal Pro Bono Project of the United States District Court, Northern District*
2 *of California*, at 2, revised June 25, 2008.

- 3 4. The Case Management Conference currently scheduled for June 17, 2010 at 10:00
4 a.m. is also continued to **August 5, 2010 at 10:00 a.m.** in Courtroom 3 on the 17th
5 Floor of the United States Courthouse, 450 Golden Gate Avenue, San Francisco,
6 California. The parties shall submit a Joint Case Management Statement at least one
7 week prior to the conference.

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9 IT IS SO ORDERED.

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11 Dated: 06/08/2010



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13 _____
14 RICHARD SEEBORG
15 UNITED STATES DISTRICT JUDGE

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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Choonyoun Lee
1571 East Gate Way
Pleasanton, CA 94566

DATED: 06/08/2010

/s/ Chambers Staff
Chambers of Judge Richard Seeborg

* Counsel are responsible for distributing copies of this document to any co-counsel who have not registered with the Court's electronic filing system.

United States District Court
For the Northern District of California